No. 6485

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

QUOCK HOY SING and QUOCK HOY MING,
Appellants,

vs.

JOHN D. NAGLE, as Commissioner of Immigration of the Port of San Francisco,
Appellee.

BRIEF FOR APPELLANTS.

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STATEMENT OF FACTS.

This is an appeal from the judgment of the United States District Court for the Southern Division of the Northern District of California, Honorable A. F. St. Sure, presiding, denying a petition for writs of habeas corpus.

Quock Hoy Sing and Quock Hoy Ming are Chinese persons, aged sixteen and eighteen years, respectively, who are seeking admission to the United States as the natural foreign born sons of Quock Yuen, a native of the United States. By stipulation and order, the original immigration records were filed and deemed a part of the petition, and by stipulation and order the original immigration records were withdrawn from the lower Court and filed in the clerk's office of this Court.

QUESTIONS INVOLVED.

There are three propositions involved in this appeal:

First, the hearing before the Board of Special Inquiry was unfair because of the incompetency of the interpreters employed and the inability of the interpreters at the Angel Island Station to understand the Hock San dialect.

Second, the hearing was unfair for the reason that the immigration authorities refused to permit the father of the applicants to introduce a photograph into evidence which he claimed hung on the wall in the home in China.

Third, that the hearing was unfair in that the order of exclusion is not based upon evidence sufficient to warrant such an order being made.

ARGUMENT.

The Admitted Facts.

The citizenship of the father is admitted. It is also admitted that the father was in China at a time which makes it possible for him to be the father of two boys of the ages claimed by the applicants. After their birth, and on his return to this country and at every time he was called upon to do so by the Immigration authorities, the father gave the names, birthdates and ages of these applicants.

The Chairman of the Board of Special Inquiry in his findings stated: "Both of the applicants appear to be about the ages claimed by them."

I.

THE INTERPRETERS WERE UNFAMILIAR WITH THE HOCK SAN DIALECT.

The protracted hearing was spread over some seven days. The record consists of some fifty closely spaced typewritten sheets, covering a multitude of incidents and happenings. Every day a new member was substituted on the Board, and practically every interpreter at the station was used. The applicants claimed to have been born and raised in the Sun Wooey Hock San border district, but had been living in Canton, going to school there, for the past five years. The examination was in both the Cantonese and pure Hock San dialect. In quite a number of places the answers are not responsive, and self contradictions appear, and in many cases the witness denied stating things that were alleged to have been previously stated.

For instance it will be noted the applicant Quock Hoy Sing on several occasions was asked by the Inspector to use the dialect of his native village instead of the Cantonese dialect, which he had used by reason of his sojourn at the School at Canton, but the applicant continued to use the Cantonese dialect, notwithstanding the fact that the same instructions were frequently repeated. Finally on page 38 the Chairman asked the applicant why he refused to speak in the Sun Wooey Hock dialect, that is, the dialect of his native village. The testimony on this point is as follows:

> "You were admonished to testify in the Sun Wooey District dialect during the progress of this hearing and you said that you would do so. Why have you not done so?
>
> A. I was asked if I spoke the Sun Wooey dialect or not, but I was not asked to speak it."

Thereafter when the applicant understood that he was desired to speak the Sun Wooey Hock San dialect he did so, and on page 44 of the record the following statement appears from the Chairman to Interpreter Lee Park Lin:

> "Q. In what dialect has this applicant been testifying so far this morning?
>
> A. He has been testifying in the pure Sun Wooey dialect, that is the dialect of his native village. **I have difficulty in understanding this applicant because I am able to speak only the Sun Wooey City dialect.** I had to ask the applicant to speak very plainly in his dialect before I could understand him. I asked him if he can speak the Sun Wooey City dialect and he replied 'No.'
>
> Note by Chairman. Interpreter Mrs. D. K. Chang was present during a part of Interpreter Lee Park Lin's interpretation on this morning.
>
> She states the applicant now speaks the pure Sun Wooey dialect of his claimed native village."

And it is very interesting to note, that at the beginning of the same page of the testimony, same applicant being examined, this same interpreter, Mrs. D. K. Chang, stated that the applicant spoke Cantonese and not Sun Wooey dialect.

Now if the interpreters had difficulty in understanding the applicant, it is not surprising the applicants had difficulty in understanding the interpreters and similar statements made by these witnesses through the examination upon certain statements alleged to have been made by them previously and correcting alleged statements shows how often they did not understand the interpreters used in this case.

It is no wonder then that contradictions are to be found in this testimony, and it is not surprising there may have been some hesitancy in answering some of the questions when the witnesses did not understand what was wanted and the interpreter had difficulty in understanding the witnesses.

The Board of Review in Washington on the appeal well said:

> "The testimony shows considerable confusion and numerous changes and corrections which seem to be due to the fact that the applicants speak an unusual dialect **which some of the interpreters had difficulty in understanding.**"

And that puts the whole situation so well, in better words than we can express it, that we most heartily agree with them, as to the misinterpretation.

This Honorable Court in case of *White v. Wong Quen Luck,* 243 Fed. 547, in discussing the identical proposition said:

> "If, as a matter of fact there has been serious error made in the interpretation and recording of the answers given by an applicant to the questions propounded to him before the immigration authorities, and if the applicant or his counsel has not had opportunity of reading the record, and if it is made clear that such error in interpretation and recording is in direct respect to the matters upon which the immigration authorities have finally based their order of deportation, he may in petition for habeas corpus set up that he has been denied a fair hearing.
>
> **Under such circumstances the primary question would be, not whether there was an abuse of discretion on the part of the immigration authorities, not**

whether the weight of the testimony purporting to have been given is for or against admission, nor whether he understood the import of the questions propounded to him, but is whether the applicant has been examined fairly at all as to his right to admission in the United States. This must be so, for it is self-evident that an essential requisite of a fair hearing is that the interpreter employed must know two languages, English and Chinese, sufficiently well to translate the questions and answers with substantial accuracy. Guided evidently by the justice of such a view, the judge of the District Court permitted the petitioner, Luck, to testify that the interpretation of the dialect which he spoke had been inaccurately made and recorded before the immigration officials, in that, if the answers to the questions which were propounded had been correctly interpreted and recorded, they would have shown that he was the son of Wong Shoon Jung, and therefore entitled to admission.

We are of the opinion that the District Court committed no error in taking jurisdiction and hearing the testimony of the petitioner, and in the absence of the testimony from the record we find no reason for concluding that the court erred in holding that the applicant did not have a fair hearing.'' (Boldface supplied.)

In the very recent case, *Gonzales v. Zurbrick,* 45 Fed. (2d) 934, Court said:

''Upon the hearing of March 16th, 1929, Inspector Yeager recognized the alien's complaining by substituting another, and later a third, interpreter. As indicated, the Board of Review concluded that this action gave support to her claim and reopened the case, but, notwithstanding the evidence adduced upon the re-

> hearing affecting the competency of the interpreter the alien was ordered deported upon a consideration of the whole record. The function of an interpreter is an important one. It affects the constitutional right. The right to a hearing is a vain thing if the alien is not understood. It is of vital concern not only to the alien but to the Government as well, and it is not unreasonable to expect that, where the services of an interpreter are needed, his capability should be unquestioned."

We most respectfully urge that this Court must reverse this case on this point alone. An examination of the records shows that some interperters were only used for a question or two, evidently because they could not understand the dialect. Most of the interpreters that were used spoke the Sun Ning, Poy Ping or Cantonese, as very few people in the United States speak the Hock San dialect. Under the circumstances, as the Board of Review stated in the quotation hereinbefore set out:

> "These applicants speak an unusual dialect which some of the interpreters had difficulty in understanding."

II.

THERE IS AN AFFIDAVIT OF THE FATHER IN THE RECORD WHICH STATES IN SUBSTANCE THAT AFTER THE HEARING AND HE WAS UNDER THE RULES ABLE TO SEE THE TESTIMONY, THAT HE HAD CALLED TO THE ATTENTION OF THE BOARD OF INQUIRY THE FACT THAT THERE WAS A PHOTOGRAPH OF THE PATERNAL GRANDMOTHER WHICH HE WISHED TO BE PRESENTED TO THE APPLICANTS FOR IDENTIFICATION AND THAT THIS PRIVILEGE WAS DENIED HIM, AND THAT HE HAD REQUESTED AN INTERPRETER FAMILIAR WITH HIS DIALECT.

The affidavit of Quock Yuen reads as follows:

"Quock Yuen being first duly sworn deposes and says that he is the blood father of Quock Hoy Ming and Quock Hoy Sing. That at the hearing of said cause, this affiant told the examining inspector that he desired to introduce into the record the photograph of the affiant's mother for the purpose of having his sons identify it inasmuch as there was a similar photograph in their home in China. The offer having been made to the inspector, the inspector refused to accept it, saying no, that the affiant would not need them. Affiant further states that the photograph was not exhibited to the applicants during the hearing and that he, affiant, desires the same to be exhibited to them.

Affiant further states that the hearing of the application for admission of his said sons extended over a period of seven days, that during that time a great number of interpreters were used and that none of the various interpreters with the exception of one, were able to speak his native dialect or understand him thoroughly.

That your affiant frequently requested an interpreter who could speak and understand his native dialect, but the privilege was denied."

It requires no citation of authority to prove that the refusal of the immigration authorities to receive this evidence would constitute this hearing unfair, and a denial of due process of law.

III.

THE EVIDENCE.

We do not propose in this brief to take up the time of the Court and discuss each claimed discrepancy and the explanation thereof and that owing to the fact of faulty interpretation that the answers given to the various questions must of necessity be incorrectly translated. The most important so-called discrepancy, and the only one to do with the family relationship consists of the following:

It is claimed by the Board of Special Inquiry that the father stated his wife never had any brothers or sisters, and that his wife's mother, Lee Shee, was still living in Sew Kew village in China about 2 li east of his village, and there was no one living in her house with her; whereas applicant Quock Hoy Ming states his mother has a brother whose name is Leung Yin, and says that this brother with his wife and children live in the same house with his maternal grandmother in the Sew Kew village, and the other applicant at first according to the record testified that his mother did not have a brother, but later, on page 39 when asked whether he knew a man by the name of Leung Yin stated this person was his mother's brother, and that he with his wife and family, lived in his maternal grandmother's house in the Sew Kew village.

If this was a fraudulent case, or a coached case, there would never have been a living grandmother in a neighboring village.

This matter was not fully developed in the testimony of the father on further examination. This man is probably a cousin of the wife and not a blood brother, but the applicants have been in the custom of calling him uncle as is customary among Chinese children to call a cousin, and this is borne out by the first statement of the applicant Quock Hoy Sing that his mother had no brothers, but undoubtedly because he and the other brother had been in the habit of calling this man uncle, the relationship in their answer is shown as uncle instead of cousin. Moreover, a further and very probable explanation of this matter is the difficulty of understanding the interpreters. This is shown by the fact that at first one of these applicants actually stated that his mother had no brother. As to the fact the father says no one is living with his wife's mother in her house in Sew Kew village, whereas the applicants place this cousin or uncle as they call him in that house. The evidence shows that the father only made a casual visit to that village and does not even show when he made that visit so that he may not have seen this man or his family may not have been living there when the father made that visit. On this point he testified as follows:

"Q. Have you ever seen your wife's mother?

A. Yes, occasionally I saw her in her home in Sew Kew village."

It is further noted in the evidence that the father and these applicants all agree that they did not go together to

see this maternal grandmother, and that she never visited their home, so that the applicants who claim to have made very frequent visits would have more accurate knowledge as to whether this man was living in that house. And he and his family may have been living there when they made their visits and may not have been living there when the father visited her house. It may have been a long time since the father visited that house.

These differences may also undoubtedly be due to a misunderstanding between witness and interpreters as to just what is meant by living in a house. For instance, in this very record, the father on page 7, testified as follows:

> "Q. Can you state why you stated on April 25, 1911, that your family was **living** in Canton City?
> A. We went there only on a visit."

In other words he evidently considered his family being in the house on a visit as living in that house, or the word "living" in the question was not understood.

The description, moreover, of this maternal grandmother by all three witnesses is in remarkable agreement, the father and witness Quock Hoy Ming agree she was an old lady about 70 years of age, had difficulty in walking, that she uses a cane and sometimes wears glasses.

Applicant Quock Hoy Sing agrees fully with this description of his grandmother. He did not first state that she had a cane, but afterwards stated that she had a cane which she used on long walks; now, these little details are small things, but if this were not a genuine case this description of this old lady would not be so accurate as to every detail.

Another very important point showing that this is a genuine case is that when the boys were asked how this old lady was supported said, she had some money, and that their family helped her some, and contributed some to her, and it will be noted from the father's testimony that he agrees to this. These are the things which have a strong tendency to show the bona fide character of a case, and in view of the agreement, and under the circumstances cited, the alleged difference between them as to whether Leung Yin actually lived at that house is certainly not very important.

Especially is this true in view of this Court's decision in the case of *Jin Suey,* 41 Fed. (2d) 522, where the father and previous landed brother said a cousin lived in the second house of their row, and the applicant stated he was no relative.

We respectfully ask this Court to examine the record and briefs in the *Jin Suey* case which it has at its disposal. Particularly we call to the attention of this Court pp. 41, 42, 43 of the transcript of testimony in the *Jin Suey* case and pages 14 and 15 of the Government's brief, which relates to the discrepancy as to the cousin which the father and previous landed brother testified to, and of whom the applicant had never heard. As said by this Court in the *Jin Suey* case:

> "The discrepancies sink into insignificance when compared with the many subjects upon which there is agreement, and some discrepancies are to be expected in the testimony of the most truthful witnesses. Go Lun v. Nagle, 22 Fed. (2) 246; Nagle v. Dong Ming, 25 Fed. (2) 438. * * *

> When all the testimony is considered we think the discrepancy relative to the question of a little bridge in the village, as well as that in respect of the whereabouts of one Jin Tung On and **the relation to the family of one Jin Wee Gin,** is ruled by considerations adverted to by us in Nagle v. Wong Ngook Hong, 27 Fed. (2) 650.''

The all important question was, did the grandmother live in Sew Kew village? The collateral question as to who, if anybody was living with her, and as to whether he was an uncle or cousin pales into insignificance, when considered with the mass of detail and corroboration as to her existence and relationship, to-wit: as to her appearance, age, glasses, inability to walk without a cane, as to how she was supported partly from her own means and partly from contribution from the father. This detail alone is indicative of the truth of the statements of these parties and should be guiding to this Court.

IV.

THE ORDER OF EXCLUSION IS NOT BASED UPON EVIDENCE SUFFICIENT TO WARRANT SUCH AN ORDER BEING MADE.

Applicants Made a Very Strong Case in the Administrative Proceedings.

Now when we come to the favorable side of this case, there is no end to the remarkable agreements on details upon which these boys and the father could not possibly agree, if this was not a genuine case. The Court will note throughout that the movements of these applicants and the father from school to school, and place to place, and other events, is absolutely and perfectly in agree-

ment; the description of the whole house in every detail, of the home village, the family history, of the two schools where the boys went to school, are all in perfect agreement. They even agree upon such a minor thing as over the door of the home school the name of that school was carved in stone, and the proper name is given in the testimony. They all know the names at the home villages was ever known by, although when first being questioned about the name of the village they did not give all the names.

On page 7 of the testimony the father was asked: "Q. Have you ever heard of Lin Hong Village?" To which he answers: "This is the same character as Tong." And on this same point Quock Hoy Ming stated on page 46 as follows:

> "Q. You previously stated that the only name of your village was Lin Tong Village?
>
> A. I called my village Lin Tong for short, but the full name is Lin Tong Quong."

And on the same page, when he was asked:

> "Q. Have you ever heard of the Lin Tong Hong village?
>
> A. Yes, that is my home village."

This same name is agreed to by the other witnesses as being the name of the home village.

Many other telling points showing the bona fide character of this case fill the record, for instance, both applicants and father agree when the boys were at the home village he took them on numerous occasions to a nearby market and that on one of these occasions four or five years ago he took them to a certain barber shop, and the location of this barber shop was given as being near a tea

house, which they all agree is called "Kai Taw." These are incidents which speak very loudly for the relationship and of the truth of these two witnesses, and thousands of these similar instances could be pointed out in favor of the case, and the only discrepancies that really occurred in it are such as we would expect in a genuine case, because when these variances do occur, the events and connecting circumstances are in absolute agreement, and thereby make the variances of no importance.

And this is most remarkable in this case, because there is so much in the case which would give such a great chance for disagreement, if it were not a genuine case; for instance, instead of attending one school, these applicants are shown to have attended two schools, necessitating the description of these two schools and location of these two schools, and the teachers in these schools and everyone connected with school life in these schools, and the various trips they made home from one school to the other, the various trips they made and where they stayed during these times; such things as having their photographs taken, all is agreed to, who was with them and when the photographs were taken, and the trips they made to Hong Kong, having made two attempts to come to the United States, (the first time not being successful, owing to an embargo or quarantine on emigrants) and being detained in getting off, and on both of these trips they agree as to where they stayed in Hong Kong, what beds they slept in, where the beds were located, and everything connected with these trips, the modes of travel, etc., also the father's visits to the school in Canton City. They agree that he stopped at the Hong Fat Company where they stayed in Canton before they started to school, the location of the

school building, the description of the school; all of this mass of detail is in agreement. All of the events of any importance whatever are in agreement, and we respectfully urge to the Court that we cannot see how this case, under any circumstances, can be denied in view of the facts herein stated.

In addition to all of these favorable features, there is another very important item of evidence, and that is the group photograph which the father has presented in this case, of his wife and his sons. This photograph was taken ten or twelve years ago, and this photograph of his family would not be in his possession, or carried around with him, and would not be presented in this case, if this was not a genuine case. This photograph, although taken of these applicants ten years ago, when they were small boys, is an exact likeness of them, and is undoubtedly their photograph and these applicants are able to identify this photograph and every person in it, the same as the father does, and more than that, they agree that a similar photograph is at home in their house in China.

It is conceded that these boys are of about the age claimed by them. As to physical resemblance between the applicants and their father; a comparison of the photographs of the applicants and the group photograph by this Court will convince the Court as it does the writer, that the resemblance is most remarkable. As to the physical comparison between the father and the applicants, the Board of Review at Washington, stated:

> "In commenting upon the result of the physical examination, two of the three members of the Board at the port seemed to have noticed some resemblance between the alleged father and one or the other of the

> applicants. The Board of Review does not find on examination of the photograph submitted a resemblance in any convincing degree supporting the claimed relationship. There is also submitted a photograph claimed to be that of the alleged mother with three claimed sons of the alleged father including these two applicants taken when they were little children, but in the case of the older Hoy Sing it is by no means certain that he is identical with the child pictured in the group photograph, and there is no evidence to support the alleged father's interested claim that this group pictured is his family."

Thus it will be noted that there is a resemblance physically between the father and the applicants, and the Board of Review concedes definitely as to one of the applicants, that he is in the group photograph and that as to the other "it is by no means certain." How could the father bring any other testimony to show that the group family was his family, other than by the corroboration of all the witnesses that a copy of this photograph was in the home.

As said by this Court in the *Jin Suey* case heretofore referred to:

> "Indeed, upon so many matters of detail touching the home village and family life and history are the appellant, his alleged father, and an alleged prior landed brother, in accord, that escape from the conviction that appellee was reared in the village and sustained the most intimate relations to Jin Jung For's family, is well nigh impossible. **No coaching unless carried on through a series of years would enable the witnesses to testify in such good agreement upon so many points.**"

We do not wish to burden the Court with excerpts from the decided cases which support our contention that the discrepancies, if any, are immaterial when considered with the great mass of detail on which the witnesses are in agreement.

In *Johnson v. Ng Ling Fong,* C. C. A. 1st, 17 Fed. (2d) 11, the Court said:

> "The records in the Immigration Department concerning the alleged father and his family since 1909 are so complete, and the statement as to the number of births of his children have been so consistent, through this long period of time, that it is inconceivable that fair-minded men, free from bias and suspicion, should entertain any reasonable doubt as to the relationship of the applicant and the alleged father, * * *."

We respectfully submit that this Court should determine that the Immigration authorities acted against reason when they decided that the applicants were not the sons of their alleged father.

Hom Chung v. Nagle, No. 6031, C. C. A. 9th, 41 Fed. (2d) 126;

Go Lun v. Nagle, 22 Fed. (2d) 246, C. C. A. 9th;

Nagle v. Dong Ming, 26 Fed. (2d) 438, C. C. A. 9th;

Nagle v. Wong Ngook Hong, et al., 27 Fed. (2d) 650, C. C. A. 9th;

Wong Tsick Wye, et al. v. Nagle, 33 Fed. (2d) 226, C. C. A. 9th;

Gung You v. Nagle, 34 Fed. (2d) 848, C. C. A. 9th;

Nagle v. Jin Suey, 41 Fed. (2d) 522, C. C. A. 9th.

In the case of *Chung Pig Tin v. Nagle,* 45 Fed. (2d) 484, this Court said:

"Before taking up these discrepancies, real or apparent, it may be well to consider the scope of the examination out of which they arose. The testimony of the alleged father taken at Los Angeles, covers upwards of twenty single spaced typewritten pages, and the testimony of the appellant, taken at San Francisco, covers approximately seven pages. The witnesses were interrogated as to their home life and relatives, near and remote; as to the home village; the number of houses in the village; the names of the occupants and the names of their children; the name of the school teacher and the names of his wife and children; the number of children attending school and their names; the ancestral hall, and a multitude of other collateral questions. In all of this testimony there was such general agreement, and the scope of the examination was so broad, as to preclude any reasonable probability of coaching or collusion.

The importance of discrepancies in testimony must be determined from the entire record in the case, and when the discrepancies in question are considered in that light they did not, in our opinion, justify the rejection of all testimony given by witnesses who were not otherwise impeached. As said by this court in Go Lun v. Nagle, 22 F. (2d) 246, 247:

'We may say at the outstart that discrepancies in testimony, even as to collateral and immaterial matters, may be such as to raise a doubt as to the credibility of the witnesses and warrant exclusion; but this cannot be said of every discrepancy that may arise. We do not all observe the same things, or recall them in the same way, and an American citizen cannot be excluded, or denied the right of entry, because of immaterial and unimportant discrepancies in testimony covering a multitude of subjects. The purpose of the hearing is to inquire into the citizenship of the appli-

cant, not to develop discrepancies which may support an order of exclusion, regardless of the question of citizenship.'

See, also, Nagle v. Dong Ming, (C. C. A.) 26 F. (2d) 438; Wong Tsick Wye v. Nagle, (C. C. A.) 33 F. (2d) 226; Gung You v. Nagle, (C. C. A.) 34 F. (2d) 848; Hom Chung v. Nagle, (C. C. A.) 41 F. (2d) 126.

We will now refer briefly to the discrepancies relied upon. In the matter of the first one, the alleged father was not asked to describe the two small rooms, their size, or the purpose for which they were used, and it may well be that for all practical purposes there was in fact but a single room of any consequence in the ancestral hall. As to the second discrepancy, what was meant by the term 'family' is not entirely clear, nor is it at all certain that the term would include a remote ancestor, such as a great grandparent. In other words, it may well be that the answer of the alleged father was not responsive to the question at all, and if not, the fact that the appellant answered differently is of no moment. The scar on the left temple of the appellant was the result of a wound received by him so early in life that he could not recall when or how the injury was incurred, nor did the alleged father have any knowledge concerning the same. The scar, therefore, was not a matter of great concern, and it would not be at all surprising if, after the lapse of about five years, the alleged father placed it under the left cheek bone instead of on the left temple, or if he was mistaken to some extent as to its size or location. Indeed, the fact that he testified to the scar on the left side of the face would tend to corroborate him rather than to contradict or weaken his testimony. The same may be said in large measure in regard to the delivery of the $60 in Chinese money to the family of the alleged father. We can understand how the appellant may

have had no knowledge of the delivery of the letter, or failed to recall it if he ever had such knowledge. The fact that he had knowledge of the delivery of the $60 would tend to corroborate him, unless it be said that he was coached on this subject. But if coached as to the $60, why not as to the delivery of the letter as well? The fifth discrepancy is still less important. **Surely an American citizen should not be excluded from the United States because he and another witness differed slightly as to whether they parted at the door of the house or at the village gate some years before.**

The Board of Special Inquiry found certain discrepancies to which the Board of Review paid no heed. Some of these are set forth in the brief of the appellee and others have been abandoned. It would serve little purpose to consider or set forth these so-called discrepancies here. Suffice it to say that they are even less important than those we have considered, and, viewing the testimony as a whole, as we must, we are constrained to hold that the rejection of the testimony given by the alleged father and the appellant was neither authorized nor justified.

The order is reversed, with directions to issue the writ as prayed.'' (Boldface supplied.)

CONCLUSION.

Although there are alleged differences pointed out by the San Francisco office, and most of these are abandoned by the Board of Review, these differences as a matter of fact do not amount to differences in this case, and for three important reasons these differences should not be given any serious consideration.

First. Because the record itself shows there was difficulty in understanding between the interpreters and the witnesses.

Second. Because the agreements on the essential and connecting facts destroy the effect of the differences.

Third. For the reason notwithstanding the fact there is agreement on the surrounding and connecting and incidental circumstances on every discrepancy pointed out by the San Francisco office, **at no time was the father or either one of these applicants recalled and taken over any of these alleged differences.** The fact that there is agreement on the connecting and incidental circumstances which actually eliminated the differences, either demanded a recall of the witness in question, or elimination of all objections to the case.

Having failed under such circumstances, (especially where the record shows lack of understanding between the interpreters and the witnesses) even to recall any one of the witnesses makes it unfair to hold that such minor points should be determinative of the issues in the case. We would respectfully request this Court to make its order reversing the lower Court, and that the writ be granted.

Dated, San Francisco,
October 3, 1931.

Respectfully submitted,
J. H. Sapiro,
Attorney for Appellants.